
(2001) 08 AHC CK 0086
In the Allahabad High Court
Case No : Writ Petition No. 1834 of 1984

Bechna

APPELLANT

Vs

D.D.C.Varanasi and Others

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48

Citation : (2001) 08 AHC CK 0086

Hon'ble Judges : R.H.Zaidi, J

Final Decision : Allowed

Judgement

R.H. Zaidi, J.—Heard learned Counsel for the parties and also perused the record.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 2311984 passed by the Deputy Director of Consolidation allowing the revision filed by the contesting Respondent No, 2, Shri Kamla Prasad Singh.

3. The relevant facts of the case giving rise to the present petition are that in the basic year, over Khata No. 19 Kha, for short "the land in dispute name of the petitioner Smt. Bechna was recorded. Objection under Section 9A of the Uttar Pradesh Consolidation of Holdings Act, for short "the Act", was filed by Respondent No. 2 claiming that the name of the petitioner in the revenue papers was farzi, it was liable to be expunged and that the said respondent was entitled to one half share in the land in dispute. The objection filed by Respondent No. 2 was contested by the petitioner pleading that it was on 13111956 that a saled deed was executed by Respondent No. 2 in her favour on the basis of which, she applied for mutation of her name in the revenue papers. Her name was mutated after due notice to the said respondent on the basis of saled deed executed by Respondent No. 2. Long thereafter in the year 1978 that the village where the land in dispute is situated, came under the operation of the Act. In the objection filed by Respondent No. 2, the validity of the saled deed was not

challenged on the ground that at the time of execution of the sale deed, the said Respondent No.2 was minor. Parties produced evidence, oral and documentary, in support of their cases before the Consolidation Officer. In the evidence, it was attempted to prove that at the time of execution of sale deed, Respondent No. 2 was minor, therefore, the sale deed in question was void. The Consolidation Officer, after going through the evidence on the record, allowed the objection filed by Respondent No. 2 by his judgment and order dated 30/11/1979. Challenging the validity of the said order, an appeal was filed by the petitioner before the Settlement Officer Consolidation. The Settlement Officer Consolidation dealt with the matter in detail and after hearing the parties, it was held that the sale deed was duly executed by Respondent No. 2 after receiving the full consideration and that he was major on the date of execution of sale deed. The name of the petitioner was, thus, rightly recorded over the land in dispute in the revenue papers. It was also held that the petitioner was also in possession of the same. Having recorded the said findings, the Settlement Officer Consolidation allowed the appeal filed by the petitioner by judgment and order dated 11/11/1982. The Respondent No. 2, thereafter, filed a revision challenging the validity of the order of the Settlement Officer Consolidation. The Deputy Director of Consolidation reversed the findings recorded by the Settlement Officer Consolidation and allowed the revision by the impugned order. Hence, the present petition.

4. Learned Counsel for the petitioner vehemently urged that the Deputy Director of Consolidation was the last Court of the facts, he could look the propriety of the orders passed by authorities below but could not himself act as the Consolidation Officer. It was urged that in case the findings recorded by the authorities below were found illegal or perverse, he could set aside the said finding but could not substitute his own findings for the said findings. It was also urged that the Deputy Director of Consolidation did not meet the reasoning given by the Settlement Officer Consolidation in upholding the claim of the petitioner and allowing the appeal, therefore, the judgment and order passed by the Deputy Director of Consolidation was liable to be set aside.

5. On the other hand, learned Counsel for the Respondent No. 2 supported the validity of the order passed by the Deputy Director of Consolidation. It was urged that the order passed by the Deputy Director of Consolidation is concluded by findings of fact, which are based on material evidence on the record, they are not amenable to the jurisdiction of this Court under Article 226 of the Constitution of India. The writ petition has got no merit, the same deserves to be dismissed.

6.1 have considered the submissions made by learned Counsel for the parties.

7. Smt. Bechna, as stated above, claimed that she was in possession over the land in dispute since the sale deed was executed in her favour on 13/11/1956 by Respondent No. 2. Her name was also mutated in the revenue papers after following the procedure prescribed under the " law, therefore, she was entitled to retain the land in dispute. In the objection filed by the Respondent No. 2, the

validity of the saledeed was not challenged by the Respondent No. 2. It was also not pleaded that he was minor at the time the saledeed was executed, therefore, he had no right to lead evidence contrary to his pleadings, that at the time of execution of saledeed in question he was minor inasmuch as it is well settled in law that no amount of evidence shall be admissible in the absence of pleadings. The evidence led by Respondent No. 2 to the effect that he was minor at the time of execution of saledeed was, thus, inadmissible in evidence. However, in case, the Deputy Director of Consolidation felt that the findings recorded by the Settlement Officer Consolidation, for any reason, were not correct, he could upset the findings and remand the case for decision afresh to the Settlement Officer Consolidation. He had no jurisdiction to substitute his own findings for the findings recorded by the Settlement Officer Consolidation on the questions of facts after reappreciating and reappraising on the evidence on record, which was relied upon by the Settlement Officer Consolidation. The submission made by learned Counsel for the contesting respondent, to the contrary, therefore, cannot be accepted. In my opinion, the writ petition is liable to be allowed and the case is liable to be remanded to the Deputy Director of Consolidation for decision afresh in the light of the observations made above and in accordance with law.

8. The writ petition succeeds and is hereby allowed. The judgment and order dated 31/1/1984 is hereby quashed. The case is remanded to the Deputy Director of Consolidation for decision afresh in the light of the observation made above in accordance with law, expeditiously, preferably within a period of three months from the date a certified copy of this judgment is communicated to him.